

December 15, 2010

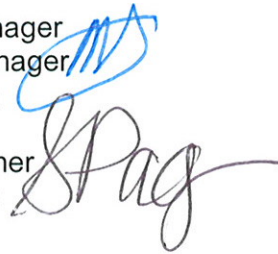
APPROVED BY


 DEPARTMENT DIRECTOR

FROM: KEITH BERGTHOLD, Assistant Director
 Development and Resource Management Department

THROUGH: KEVIN FABINO, Planning Manager
 MIKE SANCHEZ, Planning Manager
 Development Services Division

BY: SOPHIA PAGOULATOS, Planner
 Development Services Division



RECOMMENDATION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the 2025 Fresno General Plan, the Central Area Community Plan, and the Jefferson Redevelopment Project Area Plan; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described below and by the accompanying environmental assessment. Upon consideration of this evaluation, it has been concluded the nightclub use proposed in Conditional Use Permit Application No. C-10-185 is appropriate for the project site. Therefore, staff recommends that the Planning Commission:

1. ADOPT the environmental finding of a Categorical Exemption pursuant to Class 15301 of the California Environmental Quality Act Guidelines as the licensing of an existing facility;
2. APPROVE Conditional Use Permit Application No. C-10-185 for a State of California Alcoholic Beverage Control Type 41 license (*restaurant – sale of beer and wine for consumption on the licensed premises*) and a night club at the existing Me-Khong Restaurant subject to the conditions of approval dated December 15, 2010.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-10-185 has been filed by Bettie Vixay of the Me-Khong Restaurant and pertains to a 0.34 acre property located at 2001 East Belmont Avenue, on the north side of East Belmont Avenue between North Diana and North Clark Streets. Conditional Use Permit Application No. C-10-185 requests authorization to establish a State of California Alcoholic Beverage Control Type 41 license (*restaurant – sale of beer and wine for consumption on the licensed premises*) and a night club at the existing Me-Khong Restaurant. The property is located in the C-6 (*Heavy Commercial*) zone district. Pursuant to Fresno Municipal Code Section 12-326 related to Restaurants, Taverns and Nightclubs, the Planning Commission is the granting authority for nightclubs proposed in the C-6 zone district.

PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-10-185 requests authorization to establish a State of California Alcoholic Beverage Control Type 41 license (<i>restaurant – sale of beer and wine for consumption on the licensed premises</i>) and a night club at the existing Me-Khong Restaurant.
APPLICANT	Bettie Vixay
LOCATION	2001 East Belmont Avenue, on the north side of East Belmont Avenue between North Diana and North Clark Streets (Council District 3, Councilmember Sterling)
SITE SIZE	0.34 acres
LAND USE	Commercial Mixed Use Level 1
ZONING	C-6 (<i>Heavy Commercial</i>)
PLAN DESIGNATION AND CONSISTENCY	The proposed nightclub use is a conditional use in the C-6 (<i>Heavy Commercial</i>) zone district. The land use consistency table (Exhibit No. 8) of the Central Area Community Plan does not list the C-6 zone district as consistent with the Mixed Use Level 1 planned land use, however Fresno Municipal Code Section 12-607-A exempts properties zoned prior to the adoption date of the article. The subject property was zoned C-6 prior to adoption of the article in 1987, therefore consistency is not required.
ENVIRONMENTAL FINDING	Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 as the licensing of an existing facility
PLAN COMMITTEE RECOMMENDATION	No District 3 Plan Implementation Committee exists at this time.
STAFF RECOMMENDATION	Approval of Conditional Use Permit Amendment C-10-185 with conditions and adoption of related environmental assessment.

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Residential (Central Area)	R-3 <i>(Medium Density Multiple Family District)</i>	Alley and multiple family residential
South	Open Space	C-6 <i>(Heavy Commercial District)</i>	vacant
East	Commercial Mixed Use Level 1	C-6 <i>(Heavy Commercial District)</i>	Retail Building
West	Commercial Mixed Use Level 1	C-6 <i>(Heavy Commercial District)</i>	AT & SF Railroad tracks Multipurpose trail Church

ENVIRONMENTAL FINDING

The project was determined to be exempt from the California Environmental Quality Act (CEQA) under Section 15301 of the CEQA Guidelines as the licensing of an existing facility. In addition, none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project. Therefore, no further environmental assessment is required.

BACKGROUND / ANALYSIS

Project Description

Conditional Use Permit Application No. C-10-185 has been filed by Bettie Vixay of the Me-Khong Restaurant and requests authorization to establish a State of California Alcoholic Beverage Control Type 41 license (*restaurant – sale of beer and wine for consumption on the licensed premises*) and a night club at the existing Me-Khong Restaurant. No physical changes to the building or site are proposed with this request. The nightclub classification is being requested to allow customer dancing at the establishment from 10:00 pm to 2:00 am Thursday through Sunday. Other activities proposed are live entertainment, karaoke, and video games.

The applicant has owned the 3,650 square foot building and adjacent parking lot since 1989. The building currently has two tenant spaces, each 1,825 square feet. A travel agency is located in the eastern space, and the restaurant which is proposing to add the nightclub operations is located in the western space. A Site Plan Review application was approved in December of 2002 for a parking lot on the adjacent property to the east (also owned by the applicant) for 17 spaces, which meets the requirements for nightclubs within the boundaries of the Central Area Community Plan.

The floor plan for the restaurant/night club is shown on Exhibit A. The dining area consists of 677 square feet; the remainder of the 1825 square foot restaurant contains the kitchen, restroom and

storage facilities as well as a small office. No dance floor or stage is proposed on the floor plan. The maximum occupancy of the restaurant is 45. This would not change with the nightclub designation.

Originally, the applicant proposed the nightclub operation 7 days per week from 10:00 p.m. to 2:00 a.m. However, staff has recommended that the nightclub operate only 4 days per week (Thursday – Sunday) from 10:00 p.m. to 2:00 a.m. The applicant has agreed to this limitation. Pursuant to the Fresno Municipal Code, only patrons 21 and older would be allowed in the night club.

LAND USE PLANS AND POLICIES

The most relevant objectives and policies of the various plans that pertain to the project are discussed below:

2025 Fresno General Plan

Objective C-12: Commercial land uses shall be classified, located, sized and developed to meet needs for goods and services while minimizing travel requirements, infrastructure demands and adverse impacts.

C-12-a Policy: Ensure that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services.

The proposed Conditional Use Permit would allow a nightclub operation in an existing neighborhood restaurant 4 days per week. The nightclub operation is located on Belmont Avenue, a commercial corridor in the Jefferson District of the Central Area. Commercial corridors such as the one on Belmont Avenue typically have residential interface issues with adjacent residential property. The particular design of the building that would house the nightclub and its location on the property provide the best interface possible. The dining area of the restaurant is located in the front 25 feet of the building along its south-facing Belmont façade. It is buffered from the residential property to the north by approximately 45 feet of kitchen/bathroom space inside the building, a 75-foot parking lot span, a wall, and a 16-foot alley. The distance between the building and the nearest residential structure is 100 feet. Furthermore, no outdoor patio is allowed with this application, and Police Department conditions prohibit amplified music that is audible outside the building.

Policy C-2-c: Promote the Central Area Community Plan consistent with the 2025 General Plan objectives and policies to enhance its role as the focal point of regional governmental, entertainment, civic and business activities with supporting commercial uses and substantially increased residential opportunities to achieve a pleasing, vibrant and active cosmopolitan environment.

- Pursue all appropriate strategies to stimulate new office, commercial and residential development within the Central Area Community Plan including the new or innovative measures and funding sources to provide facilities and amenities necessary to attract a broad range of residents.

Approval of a small scale nightclub on the Belmont corridor adds a neighborhood entertainment venue that would be accessible to neighborhood residents without the use of a car. The nightclub

could provide a security and "eyes on the street" to the street, alley and railroad frontages on which it is located.

Central Area Community Plan

The Central Area Community Plan Exhibits 9 and 10 show the project site to be located within the Jefferson District, which is described as a neighborhood in a "serious stage of deterioration." The Blackstone/Abby and Belmont corridors are the commercial corridors which serve this mostly residential neighborhood located in the south west quadrant of the SR 180/41 interchange.

In order to protect the residential character of the neighborhood, the nightclub use has been limited to 4 nights per week, and the ABC license is a Type 41 license (beer and wine only). In addition, the Police Department conditions contain a provision requiring reduced hours of operation if calls for service become "frequent" over the first six (6) months of the nightclub's operation.

Land Use Consistency

It should be noted that while the property along the Belmont Corridor is planned Commercial Mixed Use Level 1; the C-6 zone district that underlies this planned land use along the entire corridor is inconsistent with the Mixed Use Level 1 planned land use designation. However since the zoning was in place prior to the adoption of the Local Planning and Procedures ordinance (FMC Section 12-607-A) in 1987, consistency between planned land use and zoning is not required and the zoning is the governing land use regulation. A night club is a conditional use in the C-6 zone district.

Department of Alcoholic Beverage Control

The Department of Alcoholic Beverage Control staff has indicated that Census Tract No. 23, the location of the proposed nightclub, has 4 existing establishments with alcohol licenses, which is the threshold for "overconcentration" in that census district. It was also noted that one current license holder has submitted an application to relocate its license outside of the census tract. The staff member also stated that the overconcentration threshold is only an optional grounds for denial of an ABC license request, and that in this case overconcentration would likely not be the basis for a denial of this ABC license request, as other census tracts have a higher degree of overconcentration than Census Tract No. 23.

Conditions of Approval

The conditions of approval are attached in Exhibit G and are highlighted as follows:

Police Department conditions require all of the typical stipulations related to employee training, compliance with state and federal laws governing the sale of alcohol, and video surveillance. The conditions also contain security provisions that require a minimum of two (2) state licensed uniformed security guards at all times that the establishment is operating as a nightclub. No persons under 21 years of age are allowed during nightclub operations, and the maximum occupancy is 45 during both restaurant and nightclub operations. Frequent calls for service during the first six (6) months of operations will result in a 12:00 am closure time for nightclub operations.

Redevelopment Agency Conditions require healthy landscaping, attractive fencing and gates, and compliance with all relevant codes and design guidelines.

PUBLIC NOTICE AND COMMENT

A public hearing notice for the December 15 planning commission hearing was mailed to all property owners within 500 feet of the project site on December 3, 2010 (at least 10 days prior to the hearing date). No comments from the public have been received to date.

It should be noted that the Fresno Unified School District comment letter attached in Exhibit I expressed concern regarding the proximity of Yokomi Elementary School to the project site (1,220 feet). An alcohol license can be refused by the state if the location is "within at least 600 feet from schools." Although Yokomi is not within this close proximity, FUSD still has concerns regarding potentially dangerous interaction between its students and the proposed operation. Staff acknowledges this concern, however during school hours the establishment seeking the ABC license functions as a restaurant serving alcohol, and not as a nightclub. Therefore staff concludes that the concern is not relevant in this case.

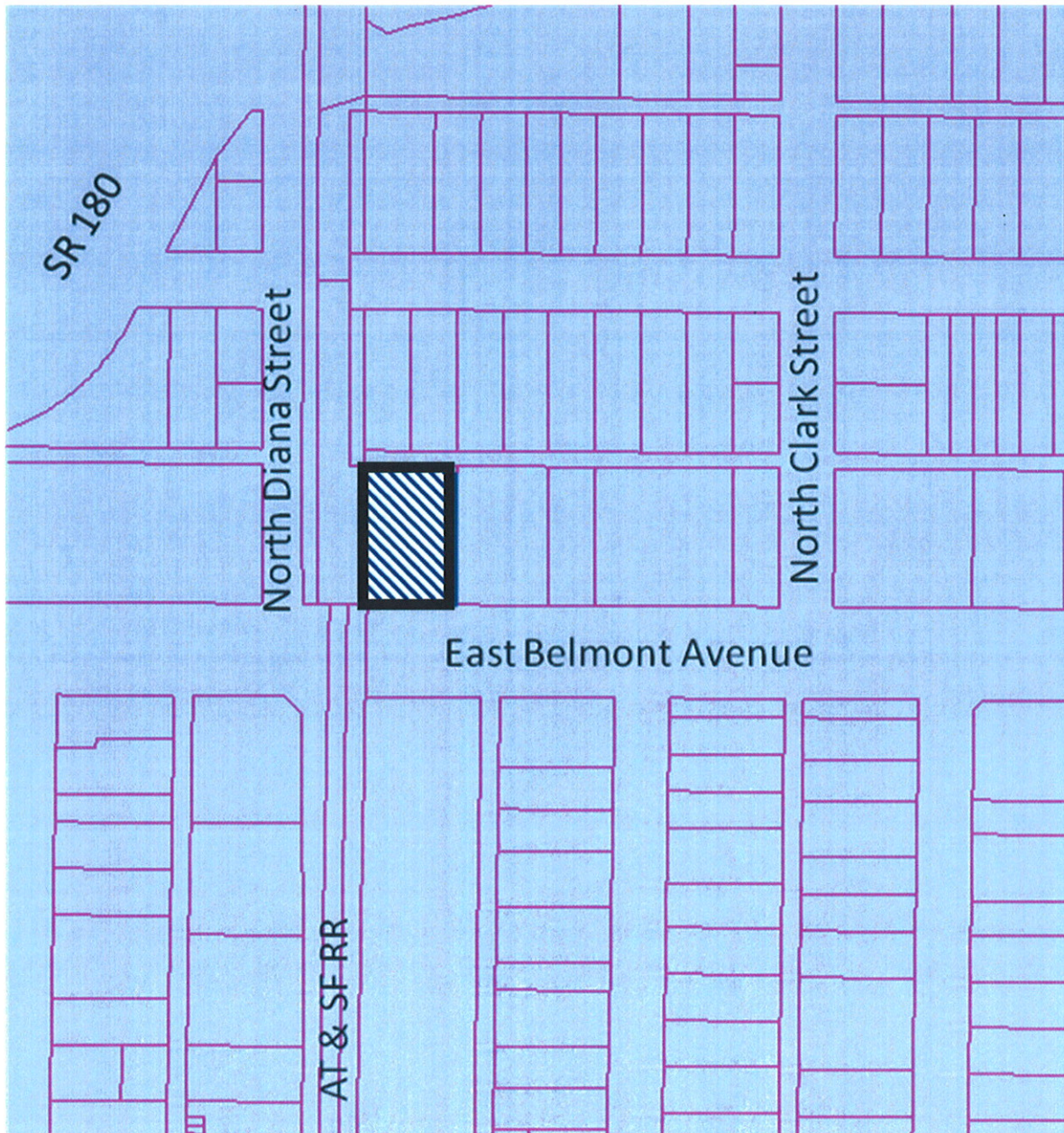
CONDITIONAL USE PERMIT FINDINGS

FINDINGS PER FRESNO MUNICIPAL CODE SECTION 12-405-A-2.	
<i>a. All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i>	
<i>Finding a:</i>	Conditional Use Permit Application No. C-10-185 will involve no physical changes on the site and no increased occupancy load. Adequate space on site does exist to accommodate the parking for the proposed nightclub use, as well as yards, walls, fences, recycling areas and landscaping.
<i>b. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i>	
<i>Finding b:</i>	A traffic study was not required for the request; traffic-related impacts were considered less than significant as the maximum occupancy load and trip generation would not change from the existing condition as a result of the granting of the permit.
<i>c. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses which are subject to the provision of Section 12-306-N-30 of this Code.</i>	
<i>Finding c:</i>	Approval of Conditional Use Permit Application No. C-10-185 would not be detrimental to those properties in the vicinity or detrimental to public welfare, with Conditions of Approval imposed. All plan policies and standards required by the Fresno Municipal Code have been applied to the proposed project as applicable to ensure compatibility with those surrounding land uses and to prevent any detriment to public welfare. Proposed nightclub operations must comply with state and federal regulations for such uses, as well as all standard Police Department requirements for security, video surveillance, loitering, and property management. The current maximum occupancy load of 45 would not be increased with the proposed application.

Exhibits:

- A. Vicinity Map
- B. Aerial Photograph, 2008
- C. Planned Land Use Map
- D. Census Tract Map
- E. Site Plan and Floor Plan
- F. Noticing Map
- G. Conditions of Approval
- H. Environmental Assessment
- I. Fresno Unified School District Comment Letter

Exhibit A
Vicinity Map



Subject Property

VICINITY MAP

DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

**CONDITINAL USE PERMIT
APPLICATION NO. C-10-185**

PROPERTY ADDRESS

2001 East Belmont Avenue



Not To Scale

APN: 452-306-11,-12
Zone District: C-6 (*Heavy Commercial*)
 zone district
By: S. Pagoulatos
Date: December 15, 2010

Exhibit B
2008 Aerial Photograph of Site

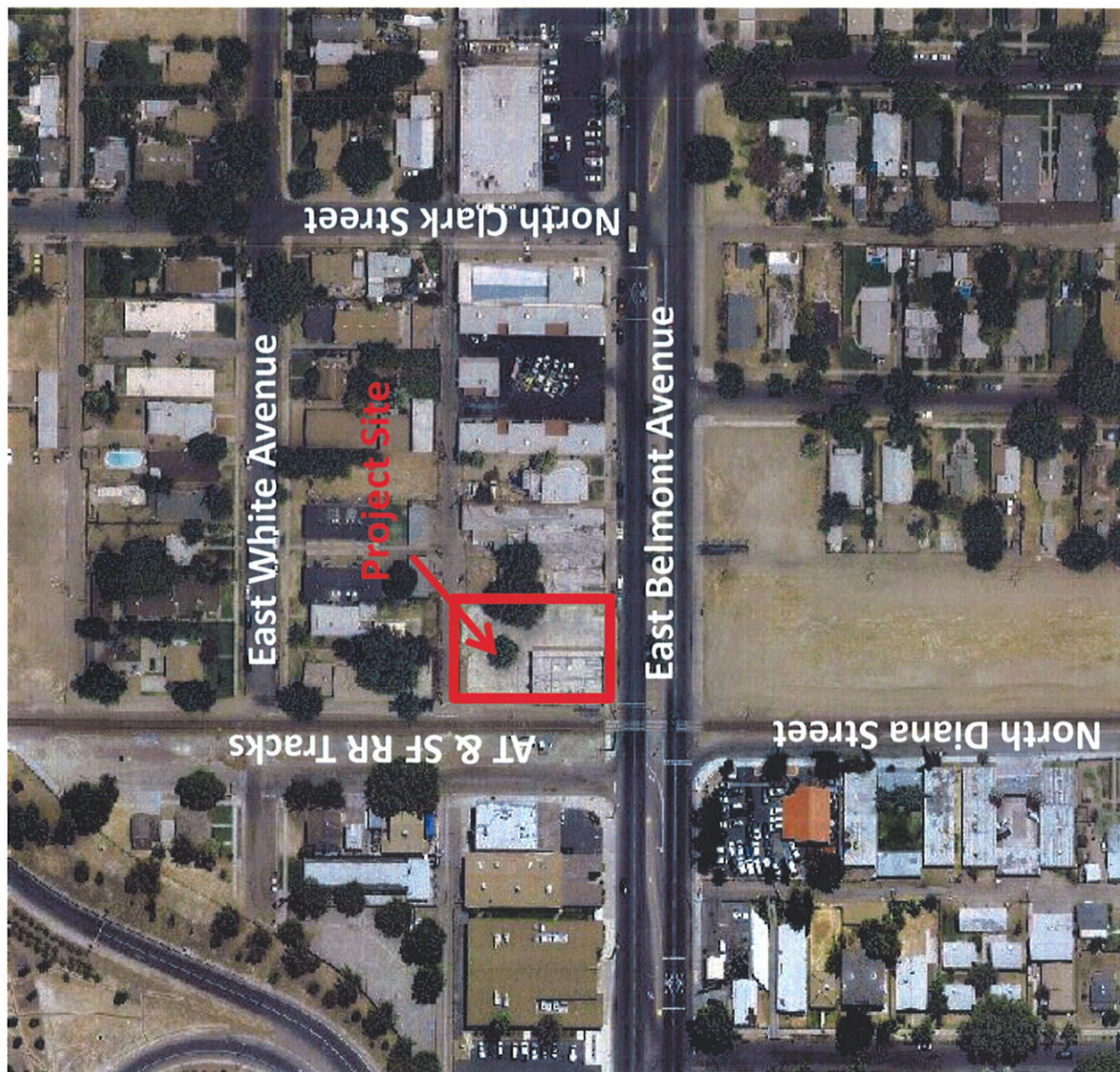


Exhibit C
Planned Land Use Map
2025 Fresno General Plan



Exhibit D
Census Tract Map
(Year 2000)

Subject
Census
Tract

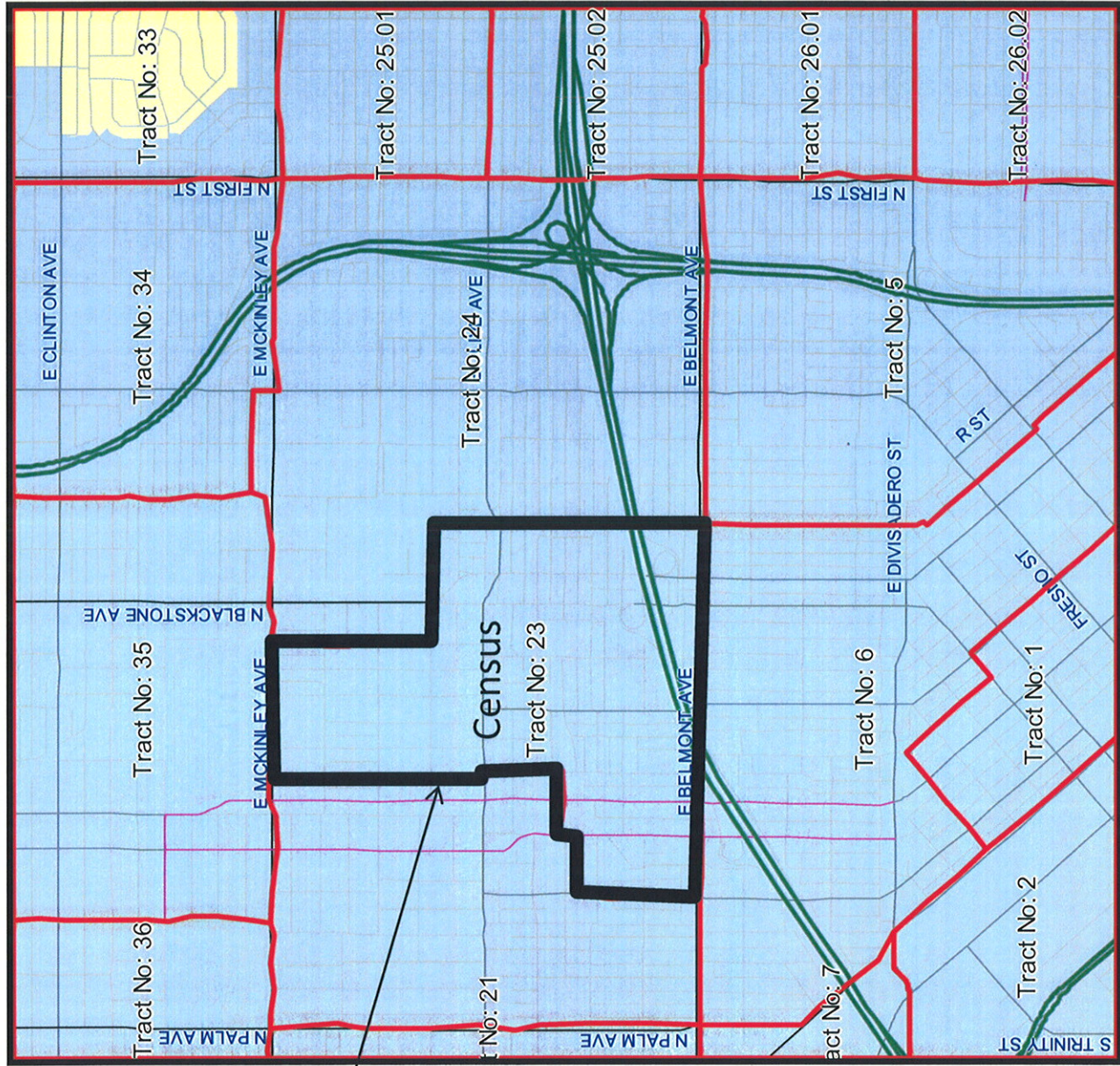
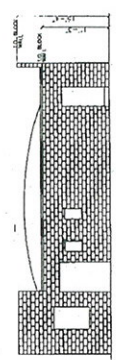
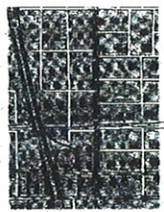


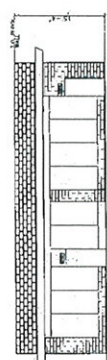
Exhibit E

Site Plan, Elevations and Floor Plan submitted for
Conditional Use Permit Application No. C-10-185
(These exhibits are subject to conditions of approval)

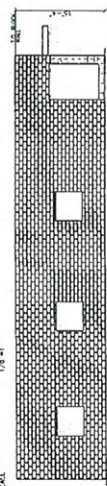
OWNER'S NAME: SID VIXAY
 PROJECT NO.: 3-25-10
 DATE: 9/3/10
 PROJECT TITLE: 3-25-10
 SHEET NO.: 3-25-10
 SCALE: 1/8" = 1'-0"



NORTH ELEVATION
 SCALE: 1/8" = 1'-0"



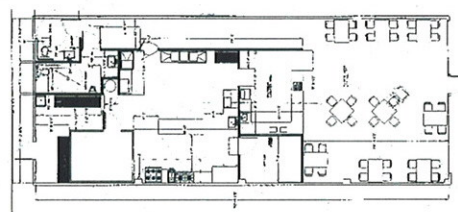
SOUTH ELEVATION
 SCALE: 1/8" = 1'-0"



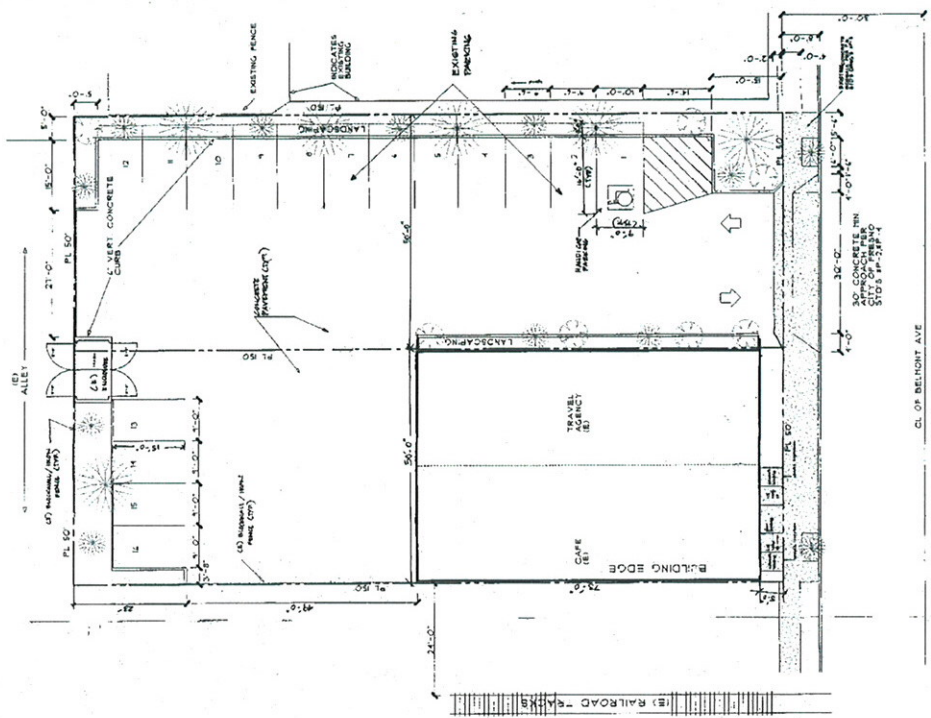
EAST ELEVATION
 SCALE: 1/8" = 1'-0"



WEST ELEVATION
 SCALE: 1/8" = 1'-0"



EXISTING FLOOR PLAN
 SCALE: 1/8" = 1'-0"



SITE LAYOUT
 SCALE: 1/8" = 1'-0"

PLANS PREPARED FOR:
 SID VIXAY
 2001 E. BELMONT AVE
 FRESNO, CA 93701

NOTICE:
 THE OWNER HAS REVIEWED AND APPROVED THESE PLANS FOR THE PROJECT AND HAS AGREED TO BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

DATE: 9/3/10
 PROJECT NO.: 3-25-10
 SHEET NO.: 3-25-10
 SCALE: 1/8" = 1'-0"

APPL. NO. C-10-185 EXHIBIT A, F DATE 9/3/10
 PROJ. ENG. _____ DATE _____
 TRAFFIC ENG. _____ DATE _____
 COND. APPROVED BY _____ DATE _____
 CITY OF FRESNO DEVELOPMENT DEPARTMENT

Exhibit F
Noticing Map (500-foot radius)

Exhibit G
Conditions of Approval for
Conditional Use Permit Application
No. C-10-185

CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

CONDITIONS OF APPROVAL

DECEMBER 15, 2010

CONDITIONAL USE PERMIT APPLICATION NO. C-10-185
2001 EAST BELMONT AVENUE

Conditional Use Permit Amendment Application No. C-10-185 is approved by the Fresno Planning Commission on December 15, 2010 subject to the following conditions of approval:

1. Exercise of the special permit shall take place in accordance with the following sections of the Fresno Municipal Code and any other applicable sections:
 - a. Section 12-105-V related to video game arcades;
 - b. Section 12-222: C-6 (*Heavy Commercial*) zone district;
 - c. Sections 12-326 and 327 related to restaurants, taverns and night clubs;
 - d. Section 12-306 related to Property Development standards
2. No outdoor activities are approved with the special permit;
3. There shall be no more than four (4) on-site video games;
4. Exercise of the special permit shall comply with all requirements of previous special permits on the property (including Site Plan Review S-02-300);
5. Exercise of the special permit shall comply with Exhibit A (Site Plan, Elevations and Floor Plan), dated September 3, 2010; the video games must be shown on the site plan;
6. Exercise of the special permit shall comply with Exhibit O, Operational Statement dated December 2, 2010;
7. Exercise of the special permit shall comply with the Police Department's conditions dated October 25 2010 and revised December 6, 2010;
8. Exercise of the special permit shall comply with the Redevelopment Agency conditions dated December 3, 2010;
9. Exercise of the special permit shall comply with conditions from the Department of Downtown and Community Revitalization;
10. A Mutual Easements Covenant may be required prior to exercise of the special permit;
6. Exercise of the special permit shall take place in accordance with all city, county, state and federal laws and regulations, including ABC licensing requirements.

OPERATIONAL STATEMENT

October 21, 2010 *Revised 12/6/10*

From: Betty Sonephady
2001-20001 E Belmont Ave
Fresno CA 93701

Dear City of Fresno:

This Operational Statement serves as a means for providing operational times/hours of operation, etc for my proposed ABC/CUP. Please verify procedures/number of employees below:

Name of Business: Mc-Khong Restaurant

Address of Business: 2001-20001 E Belmont Ave Fresno CA 93701

Product Service: Restaurant.

Anticipated Traffic/Customers: It is simply my estimation of at least 30-45 more individuals as a result of the proposed ABC/CUP license.

Deliveries: None

Any Special Events? Birthday Party, Private Party, Anniversary Party.

Number of Employees: Currently five

Required Equipment: N/A

On site Storage: None

Hours of Operation: Mon-Sunday, 8:00am-10:00pm for hourly existing restaurant.

~~Thurs~~ Mon-Sunday, 10:00pm-2:00am for karaoke, dancing, DJ, Video devices.

After 10:00pm No one under 21 allowed

We will be putting conditions closing at or before 2:00am with alcohol stopping by 1:30am

Demolition or Adaptive reuse of Existing Structures: None

Noise Generation: None

Any Hazardous Materials, etc? None

APPL. NO. C-10-185	EXHIBIT	D	DATE	12/6/10
PROJ. ENG.			DATE	
TRAFFIC ENG.			DATE	
COND. APPROVED BY			DATE	
CITY OF FRESNO DEVELOPMENT DEPARTMENT				

RESTAURANT/NIGHTCLUB ABCUP CONDITIONS

October 25, 2010
(Revised per Planning 12-06-10)

City of Fresno, Development Department
Director of Planning & Development.
Special Permit, Conditional Use Permit
2600 Fresno Street
Fresno, California, 93721-3604

Attn. Sophia Pagoulatos, Planning Division

Re: SPECIAL PERMIT NO. C-10-185 ABCUP
Applicant: Betty Sonaphady
Address: 2001 E. Belmont Ave.
Fresno, Ca. 93701
A.P.N. 452-306-12

Dear Ms. Pagoulatos,

The City of Fresno has requested that the Fresno Police Department review the Conditional Use Permit to operate a Restaurant with the retail sale of alcohol for on-site consumption and a Nightclub as defined by Fresno Municipal Code, sections 12-105-R-5 and 12-105-N-0.5 at **2001 E. Belmont Ave.** The property has been zoned **C-6** which permits the operation of a Restaurant and Nightclub pursuant to the requirements of FMC, sections 12-304, 12-326 and 12-327. We understand that along with this CUP application, the applicant has also applied for a type **41** license which if approved by Department of Alcoholic Beverage Control will allow for On-sale Beer and Wine only..

We understand from the Operational Statement that the applicant intends to operate the establishment as stated below:

Restaurant operation hours **8:00 am to 10:00 pm** Day(s) of week **Sunday thru Saturday**
Nightclub operation hours **10:00 pm to 2:00 am** Day(s) of week **Thursday thru Sunday**

**** As per the Operational Statement and the Applicant, during the hours/days of week, that the Establishment is operating as a "Nightclub" the Establishment will "only" allow patrons of the age of 21 years old or older ONLY.**

The Fresno Police Department's primary concern with the application is the propensity of the premises to generate calls for police service which indicates potential activities on the premises that are detrimental to the public welfare or injurious to persons, property or improvements.

As you know, to approve any Conditional Use Permit, the City must make the following findings:

1. All applicable provisions of the Fresno Municipal Code are complied with and the site of the proposed use is adequate in size and shape to accommodate the use, including, all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,
2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,
3. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. This third finding shall not apply to uses which are subject to the provisions of Section 12-306-N-39 of the Fresno Municipal Code (Regulating Adult Businesses).

The conditions are established to ensure public safety, and to minimize any impact for the surrounding area. This CUP allows for the **operation of a Restaurant serving alcohol and Nightclub**. We request the following conditions be included as Conditions of Approval for Conditional Use Permit Application No. **C-10-185**. These conditions will maintain an environment that is least likely to generate public complaints and calls for service. The Fresno Police Department is not in opposition of this Conditional Use Permit, provided the applicant agrees to the listed conditions.

If the following conditions are not included as conditions of approval of CUP No **C-10-185** the Fresno Police Department shall oppose the approval of this Conditional Use Permit. As such, we request that you provide the Fresno Police Dept. with notice of the Director's decision regarding this Conditional Use Permit as well as a complete copy of the conditions of approval, should the Director approve the Conditional Use Permit.

Requested Conditions of Approval:

1. Fresno Municipal Codes

The applicant shall comply with all applicable provisions of the Fresno Municipal Codes ("FMC"), including but not limited to:

- FMC 9-502 (Amusement Devices - Permit Required)
- FMC 9-1803 (Hours of Operation Billiard Hall)
- FMC 9-1804 (Restriction on Attendance of Minors in Billiard Rooms)

FMC 9-1805 (Minors allowed: Family Billiard Rooms)
FMC 10-105 (Noise Ordinance)
FMC 10-708 (Unlawful Nuisances - High Calls for Police Service)
FMC 12-306-N-30 Limitations on Adult Business Activities. Applicant shall also verify with the Planning Division that Adult Business Activities are permitted in the zone district where the applicant seeks to operate his/her business.

A current version of the Fresno Municipal Code may be viewed at the City of Fresno's website: www.Fresno.gov. The link to the FMC is located on the Home Page of that website.

2. **State and Federal Law**

The applicant shall comply with all applicable state, federal, and local law, including but not limited to the following California Business and Professions Code sections and the California Department of Alcoholic Beverage Control rules:

BP 24046 (Required to Post ABC License on Premises)
BP 25612.5 (Loitering, Open Alcoholic Beverage Containers, Consuming Alcoholic Beverages on Premises, Exterior Lighting, Litter Removal, Graffiti Removal, Signs and Barriers in Windows and Doors, Public Phones Blocked From Incoming Calls, Areas to Display Harmful Matter, Required Copies of Operating Standards Available for Public Viewing)
BP 25665 (Minors Remaining in Public Premises)
ABC Act Rule 106 (No Buy One Get One Free Drinks)
ABC Act Rule 107 (No One Under 21 Allowed Signs Posted)
ABC Act Rule 139 (Interior Lighting Required for Identification of Patrons)

3. **ABC Education**

Any and all employees hired to sell alcoholic beverages shall provide evidence that they have either:

- (1) Completed training from the State of California Department of Alcoholic Beverage Control--Fresno District Office-administered "Leadership and Education in Alcohol and Drugs" (LEAD) Program as confirmed by receipt of an ABC-issued certificate of completion; or,
- (2) Completed equivalent training acceptable to the ABC-- Fresno District Office to ensure proper distribution of beer, wine, distilled spirits, to adults of legal age.

If any prospective employee designated to sell alcoholic beverages, does not currently have such training then:

- (1) The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the final approval of the CUP, that a date certain

FMC 9-1805 (Minors allowed: Family Billiard Rooms)
FMC 10-105 (Noise Ordinance)
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If any prospective employee designated to sell alcoholic beverages, does not currently have such training then:

- (1) The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the final approval of the CUP, that a date certain

has been scheduled with the local ABC Office for the prospective employees to take the LEAD Program course; and

- (2) Within 30 days of taking the course the employee(s) or responsible employer shall deliver each required LEAD Program Certificate evidencing completion of said course.

4. Contests or Promotions

At least two weeks prior to the event, the establishment shall notify the District Commander, or his/her designee of any promotional or special events. In addition, the establishment shall obtain written approval that the current Security Plan is adequate to address security issues that may arise from the event or promotion or approval of a new Security Plan that will be in place for the promotional or special event. There shall not be any special events, promotions or contests involving lingerie, bikini, strip or go-go dancers or shows at any time.

5. Security Plan.

Prior to the approval of this Conditional Use Permit, the establishment shall prepare and submit to the District Commander a security plan for approval. Approval of the security plan by the District Commander or his/her designee shall not be unreasonably denied. The contents of the Security Plan shall be incorporated as conditions of approval of CUP **C-10-185**. The establishment shall be responsible to have the District Commander or his/her designee re-approve the security plan annually running from the anniversary date of the final approval of the CUP. The establishment is responsible for providing both the District Commander and the Planning and Development Department a copy of the approved security plan.

- This Establishment will be converting over from a restaurant to a nightclub at 10:00 pm Thursday thru Sunday as per the Operational Statement and the Applicant. Once this Establishment switches over at 10:00 pm, the allowable age inside the Establishment or attending ANY function after 10:00 pm will be **21 years of age or older only**, as per the Operational Statement and Applicant.
- As per the Fresno Fire Department, the established occupancy load for this Establishment is 45 persons total.
- This ABC CUP is to determine the Establishment is allowed only to be a License type 41 On-sale beer and wine only.
- During the time the Establishment is operating as a nightclub, from the hours of 10:00 pm to 2:00 am Thursday thru Sunday, the Establishment **SHALL have a minimum of Two (2)** state licensed uniformed security guards working and on duty, with NO exception.
- If after the Establishment begins to operate and police calls for service for noise disturbances, physical or verbal disturbances, assaults, fights, thefts, public safety, etc. The Applicant and Establishment will be placed on modified "nightclub" hours of operation for a period of six (6) months. The ending hours will be reduced to 12:00 am (midnight) with last call at 11:30 pm. This will be daily.

- During the time the Establishment is open for business, the only time that dance, DJ music service and or karaoke is allowed to be conducted is after 10:00 pm once the Establishment has transitioned to a 21 year or older "nightclub."
- During the time the Establishment is open, whether it be as a restaurant or nightclub, there SHALL be No nudity, strip shows, bikini/lingerie show- contests- promotions, no go-go dancers or performances or cages / platforms.
- During the times that the Establishments is providing any music or entertainment, the music or entertainment SHALL NOT be audible from the outside of the Establishment and any time.

The establishments Security Plan shall:

- Identify the establishment's designated contact person for all safety and security management and shall provide the telephone numbers where the contact person may be reached 24 hours a day, seven days a week.
- Confirm that a manager will be on duty during business hours and will be responsible for monitoring and controlling the behavior of patrons.
- Identify all managers of the establishment and their contact telephone numbers.
- Confirm that all bartenders and other employees shall be trained to recognize the symptoms of an obviously intoxicated patron, to refuse serving alcoholic beverages to obviously intoxicated patrons, and to report emergencies to the manager on duty and to law enforcement.
- Confirm that first aid supplies and operational fire extinguishers are located in the kitchen (if applicable), service areas and the manager's office.
- Confirm that the burglar and fire alarm is monitored by a security company 24 hours a day, seven days a week.
- Identify an adequate number of acceptable interior security personnel and exterior security personnel who will monitor and control the behavior of customers inside and outside the building, the parking lot and any adjacent property under the establishment's control. The security personnel may be employees of the establishment or licensed security personnel retained from a security firm.
- Confirm that the security personnel shall regularly monitor the parking lot and any adjacent property under the establishment's control to ensure the areas are (a) free of people loitering or causing a disturbance and (b) are cleared of patrons and their vehicles one-half hour after closing.

The establishment shall correct any safety or security problem or security plan violation as soon as possible after receiving notice (verbal or written) of such problem from the Fresno Police Department. After the initial security plan is approved and implemented, it

is the responsibility of the owner or owner's representative to contact the Fresno Police Department to inquire about police calls for service or public safety problems at the location. Contact may be made by telephone or by electronic mail. Review of police calls for services may be conducted at any time by the Fresno Police Department.

The applicant will maintain a copy of the current Security Plan and shall present the Security Plan immediately upon request by a peace officer.

If it is determined that police calls for service become "Frequent" the Fresno Police Department may initiate proceedings to amend these conditions to require additional state licensed uniformed security and/ or to recommend suspension or revocation proceedings. All on-duty licensed security guards shall comply with the uniform requirements set forth in California Business & Professions code section 7582.26.

6. Dance Area

Patrons may access any area used for dancing, from outside the premises of the establishment, only through entrances that are manned and controlled, at all times, by at least one employee of the establishment.

7. Video Camera

A fully functional color digital video camera must be in place to record the activities of patrons on the premises. The interior of the business must have at least one camera placed to focus on each area where alcoholic beverages are being dispensed (this shall include any outside patio area where alcoholic beverages are dispensed). Additionally, there shall be at least one camera placed to focus on each of the following areas; front door (s) and/or entry area, any area outside where patrons wait to enter the establishment and the majority of the open floor space area in the establishment.

The camera storage capacity should be for at least one week (seven calendar days). The System must continuously record, store, be capable of playing back images and be fully functional at all times. Any recordings of criminal activity shall be provided to the Fresno Police Department within 24 hours of the initial request.

8. Property Responsibility

Frequent responses by the FPD arising out of or relating to the operation or management of the real property owned or controlled by the permittee causing any combination of the following: animal disturbances; violent criminal acts; illegal consumption of intoxicants in public view; gaming activities; and juvenile disturbances, or any of the other activities set forth in the Fresno Municipal Code section 10-708(g) may result the commencement of CUP revocation proceedings pursuant to FMC, section 12-326-H and 12-405-E. In addition to recommending the commencement of revocation proceedings, the FPD may pursue any of the other remedies set forth in FMC, section 10-710, including assessing

finer against the proprietor for the violations of the Management of Real Property Ordinance.

9. Revocation of Conditional Use Permit

The City is permitted to revoke a Conditional Use Permit for "good cause" pursuant to the procedures set forth in FMC, sections 12-326-H and 12-405-E. Applicant is strongly encouraged to review these FMC sections to understand the circumstances that constitute "good cause."

10. Posting hours of operation and address

The owner and/or proprietor and /or applicant shall be responsible to conspicuously post the hours of operation for each phase type (i.e., restaurant, nightclub) near the entrance of the establishment. It shall be 8.5x11 inches in size, to be provided for by the City. This posting shall be made available to City officials upon request. Additionally, the address of each facility shall be posted in compliance with all City codes.

11. Posting Property

The applicant shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing or loitering will be in violation of municipal ordinances. The applicant must send a letter to the Fresno Police Department, signed and dated by the applicant, every 180 days that authorizes FPD peace officers to enter the applicant's real property and/or establishment to enforce against the aforementioned activities at the business. The owners and employees are responsible for abating those activities when they occur during business hours.

The establishment shall not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control. No alcoholic beverage will be consumed on any property adjacent to the premises (i.e., parking lot and sidewalks). If the alcoholic beverages are consumed on property not owned or controlled by the applicant, the applicant shall immediately report such consumption to the Fresno Police Department.

The establishment shall not allow any loitering on building premises or any adjacent property under its ownership or control.

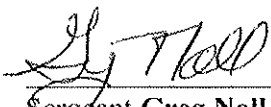
The establishment shall not allow any gambling on building premises or any adjacent property under its control.


There shall be no amusement devices or Billiard tables maintained upon the premises without the proper permits issued through the City of Fresno Business Tax Division.

12. The establishment shall ensure that all employees are aware of and comply with these conditions. The establishment shall have each employee sign a written acknowledgment that he/she has reviewed and understood each of these conditions. Each written acknowledgement shall be maintained by the establishment and made available to the Fresno Police Department upon reasonable request.

FRESNO POLICE DEPARTMENT

 Date: 10/26/10
Captain Mike Reid
Central District Commander

 Date: 10/26/2010
Sergeant Greg Noll
Central District Invest Supervisor

 Date: 10/25/10
Officer David Rady
Central District POP Officer

Applicant's Acceptance Signature

Date:
Applicant Betty Sonephady

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO
2344 Tulare Street, Suite 200, Fresno, CA 93721 (559) 621-7600

Application No.: C-10-185-ABCUP (Sophia Pagoulatos)	Date: 12/3/2010
Assessor Parcel No.: 452-306-12	Reviewer: Terry Cox,
Site address: 2001 E. Belmont Avenue	Project Manager/
Redevelopment Area: Jefferson	Management Analyst III
	Telephone: 621-7622

Agency Staff Recommendation:

APPROVE PROJECT WITH THE FOLLOWING CONDITIONS:

1. The property identified in Application No. C-10-185-ABCUP is located within the adopted Jefferson Area Redevelopment Project and is subject to all requirements of the Redevelopment Plan.
2. The Redevelopment Agency does not object to the issuance of a Type 41 State of California Alcoholic Beverage Control license (sale of beer and wine for consumption on the licensed premises) for the existing Me-Khong restaurant and the part time use as a nightclub; however the Agency is concerned with the number of ABC licenses in the area. Agency support of this project is conditioned on the ability of the development to be in conformance with all requirements of the Redevelopment Plan and the C-6 (Heavy Commercial) zone district and Section 12-304 (including subsequent applicable Sections of the Fresno Zoning Ordinance.
3. The project shall also be subject to and be in conformance with the requirements of the Industrial Development Design Guidelines as applicable.
4. The project shall be subject to all applicable requirements associated with any active approved Site Plan or permits that are enforced for the development of the overall site located at 2001 E. Belmont Avenue.
5. The project identified in this entitlement application shall be developed in accordance with the Operational Statement and Site Plan (or as revised by the City of Fresno) submitted for Conditional Use Permit Application No. C-10-185-ABCUP.
6. Portions of the existing landscaping areas adjacent to the building and surrounding the perimeter of the parking lot are generally void of plants, trees, or ground cover. All landscaped areas shall conform to the submitted site plan and be properly maintained and any dead plants, trees or ground cover will be removed and immediately replaced with the appropriate landscaping. All landscaping irrigation systems on site shall be properly maintained or repaired to ensure the healthy growth of plants and trees. Trash cans shall not be stored in the landscaping areas.
7. All fences and gates that are visible to the public along the frontage (within 45 feet) of Belmont Avenue shall be constructed of wrought iron.
8. All outdoor advertising concerning the business shall be in conformance with requirements of City code.
9. Approval of this entitlement applies only to the development identified in Application No. C-

PLEASE MAKE APPLICANT AWARE OF AGENCY COMMENTS

10-185-ABCUP, any modifications or additions shall not be allowed without the modification of this Conditional Use Permit Application with prior approval from the City of Fresno Development Department and the Redevelopment Agency.

10. All outdoor storage on-site shall be screened from view of public streets and in conformance with requirements of City code.
11. The use of entrance control barricades, such as rope fences and gates, for patrons in the public right-of-way (sidewalk) shall be restricted and subject to approval by the City of Fresno and the Redevelopment Agency.
12. It shall be the responsibility of the proposed event hall/night club (business) to comply with all security procedures required by the City of Fresno; and to provide a safe and secure night club environment for its patrons, especially in association with the on-site sale and service of alcoholic beverages.
13. All outdoor advertising on site for the nightclub shall be restricted and be in conformance with the requirements of the Fresno Zoning Ordinance and subject to approval of the City of Fresno and the Redevelopment Agency.
14. The State Mandated Training of Liquor Sales and Handling shall be required for all new employees prior to start of employment and will be implemented in the operational policy of Me-Khing restaurant/night club (business).
15. The sale of beer and wine (for consumption on the licensed premises) allowed by the requested ABC Type 41 license is consistent with the food and service provided by a full service restaurant operation such as Me-Khong restaurant/nightclub.
16. The Agency can support the issuance of an ABC Type 41 license to Me-Khong restaurant/nightclub in compliance with all requirements of ABC, the City of Fresno and Redevelopment Agency, provided that the request receives a favorable evaluation from the Fresno Police Department and adjacent property owners.
17. The Agency reserves the right to reconsider the issuance of Conditional Use Permit Application No. C-10-185 ABCUP to Me-Khong restaurant/night club (business) should the City of Fresno or the Redevelopment Agency of the City of Fresno receives any complaints about the restaurant/night club operations and/or sales of alcohol beverages inconsistent with the requirements of Application No. C-10-185 ABCUP; which can result in a recommendation to the Alcoholic Beverage Control (ABC) Department of the State of California to revoke the license.

Exhibit I

Fresno Unified School District Comment Letter



Preparing Career Ready Graduates

BOARD OF EDUCATION

Valerie F. Davis., President
Michelle A. Asadoorian, Clerk
Lindsay Cal Johnson
Carol Mills, J.D.
Larry A. Moore
Janet Ryan
Tony Vang., Ed.D.

SUPERINTENDENT

Michael E. Hanson

September 8, 2010

Sophia Pagoulatos, Development Services/Planning
Planning & Development Department
2600 Fresno Street, Third Floor
Fresno, CA 93721-3604

SUBJECT: **CONDITIONAL USE PERMIT NO. C-10-185-ABCUP
2001 E. BELMONT AVE.**

Dear Ms. Pagoulatos,

In response to the City's request for comments on the pending Conditional Use Permit (C.U.P.) referenced above, Fresno Unified School District (FUSD) has the following comments and concerns:

The existing 'Me-Khong Restaurant' located at 2001 East Belmont Avenue, is requesting to establish a Type 41 (restaurant – sale of beer and wine for consumption on the licensed premises) ABC liquor license. It is located within approximately 1,220 feet from Yokomi Elementary School.

As per the State of California's Alcohol Beverage Control Act, an alcohol license can be refused by the State if the location is "within at least 600 feet from schools." Although schools are not within close proximity to the establishment, FUSD still has concerns regarding potentially dangerous interaction between our students and the proposed operation. FUSD's response on this project is subject to the Alcohol Beverage Control Act and the Fresno Police Department's review and support of the project with regard to the concentration and use of alcohol-related business in close proximity to school sites.

Any new commercial/industrial development which occurs, may ultimately affect the District by generating employees. The children of those employees living in the District will need to be housed in District schools.

The Fresno Unified School District levies a commercial/industrial development fee of \$0.47 per square foot. If no new square footage is constructed, no development fee will be charged. Any new development on the property will be subject to the development fee prior to issuance of a building permit.

If you have any questions or require additional information regarding our comments and concerns, please contact Deana Clayton, Project Manager, at (559) 457-3066.

Sincerely,

Lisa LeBlanc, Executive Director
Facilities Management and Planning

LL:hh

c: Bruce Thele, Principal, Yokomi Elementary School

Exhibit H
Environmental Assessment No. C-10-185

**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-10-185**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Ms. Betty Vixay
2001 East Belmont Avenue
Fresno, CA 93701

PROJECT LOCATION: 2001 East Belmont Avenue
Fresno, CA 93701
(APN: 452-306-11,-12)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-10-185 requests authorization to establish a State of California Alcoholic Beverage Control Type 41 license (*restaurant – sale of beer and wine for consumption on the licensed premises*) and a night club at the existing Me-Khong Restaurant within the boundaries of the 2025 Fresno General Plan, the Central Area Community Plan, and the Jefferson Redevelopment Project Area Plan.

This project is exempt under Section 15301/Class 1 of the California Environmental Quality Act (CEQA) Guidelines.

EXPLANATION: Section 15301/Class 1 exempts the permitting, licensing, or minor alteration of existing facilities involving negligible or no expansion of the use beyond that existing at the time of the lead agency's determination.

The proposed project consists of adding a Type 41 alcohol license and nightclub operations to an existing restaurant. The current maximum occupancy load of 45 would not change with the proposed application. No physical modifications to the facility are proposed.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

Date: December 15, 2010

Prepared By: Sophia Pagoulatos, Supervising Planner

Submitted By:

City of Fresno
Development and Resource Management Department
(559) 621-8062

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